and may constitute a hindrance and impediment to interstate commerce.

It is not clear that such result may follow if the act be regarded as applying only to dispatches received within the State, although destined to persons beyond the State. The act, unlike the Indiana statute involved in the *Pendleton Case*, 122 U. S. 347, neither regulates delivery in nor out of the State and prescribes no preference in transmission. The company is permitted to give certain preferences named, but is not required to do so.

But we are not called upon to consider whether that particular requirement, one separable from all the others, is valid or not. The single ground of action stated in the plaintiff's declaration was that his prepaid message had not been transmitted "as promptly as practicable," and that this was due to negligence within the State.

The duty of transmitting without unreasonable delay was, as already stated, the clear common-law duty of the company, a duty to which the statute adds only the imposition of a penalty for default. The issue of fact in the state court was whether the delay, however caused, occurred within the limits of the State. Stated more definitely, it was whether the fault was that of the Richmond office, which accepted the message, or that of the New York office, where it is said the message must be relayed over another wire to reach either Brockton or Brooklyn in the State of New York. The indisputable fact was that a message addressed to Brockton, New York, was sent to Brooklyn, New York. Somebody somewhere made a blunder, by which there occurred delay in the proper transmission of the message. Now, if that mistake was made at Richmond, the negligence occurred within the limits of the State. If it was correctly sent to the relay point and the mistake occurred in relaying, the negligence occurred beyond the limits of the State, and the failure to

transmit "as promptly as practicable" did not occur within the state limits.

This issue of fact has been found against the plaintiff in error. Nine hours after the message was accepted the plaintiff received a written notice in these words:

"THE WESTERN UNION TELEGRAPH COMPANY,
"(Incorporated.)
"Richmond, Va., Sept. 25, 1907.
"M. CROVO AND CRENSHAW:
"Your dispatch dated to-day to S. P. Morse & Sons Brooklyn New York is undelivered.
"Reason: Unable to locate party. Give better address.
"A. C. STEVENTON,
"*Per C.*,
"Manager, Richmond, Va., office."

The manager of the company's office at Richmond testified that the notice above set out, "sent to the plaintiff in the usual and ordinary course of business, meant that the message was sent from Richmond, Virginia, to Brooklyn, New York, and not to Brockton, New York."

The only question for decision is whether a statute of the State of Virginia which imposes a penalty for the failure to transmit a dispatch received at an office of the company in the State for transmission to a person in another State is a valid exercise of the power of the State, the delay occurring in the State.

That companies engaged in the telegraph business, whose lines extend from one State to another, are engaged in interstate commerce, and that messages passing from one State to another constitute such commerce, is indisputable. Such companies and such messages come, therefore, under the regulating power of Congress. It follows then, that if this statute as applied in the state court is to be construed as a regulation of commerce between the States, it is in excess of the power of the State.

*Western Union Tel. Co.* v. *Texas*, 105 Texas, 460; *Western Union Tel. Co.* v. *Pendleton*, 122 U. S. 347; *Western Union Tel. Co.* v. *James*, 162 U. S. 650; *Western Union Tel. Co.* v. *Commercial Milling Co.*, 218 U. S. 406, 416.

In the *Pendleton Case* a statute of Indiana which imposed a penalty for the failure to deliver by messenger a dispatch sent by the sender in Indiana to a person addressed at a station in Iowa was held an attempt to regulate the method of delivery outside of the State, and therefore an interference with and regulation of interstate commerce.

In the *James Case* a statute of Georgia which imposed a penalty for the failure to diligently deliver to the person addressed in Georgia an interstate message was upheld as a valid exercise of state power in the absence of legislation upon the subject by Congress. In that case the court, by Mr. Justice Peckham, distinguished the *Pendleton Case*, saying:

"Nor is the statute open to the same objections that were regarded as fatal in the *Pendleton Case*, 122 U. S. 347. No attempt is here made to enforce the provisions of the state statute beyond the limits of the State, and no other State could by legislative enactment affect in any degree the duty of the company in relation to the delivery of messages within the limits of the State of Georgia. No confusion, therefore, could be expected in carrying out within the limits of that State the provisions of the statute. It is true it provides a penalty for a violation of its terms and permits a recovery of the amount thereof irrespective of the question whether any actual damages have been sustained by the individual who brings the suit; but that is only a matter in aid of the performance of the general duty owed by the company. It is not a regulation of commerce, but a provision which only incidentally affects it. We do not mean to be understood as holding that any state law on this subject would be valid, even in the

absence of Congressional legislation, if the penalty provided were so grossly excessive that the necessary operation of such legislation would be to impede interstate commerce. Our decision in this case would form no precedent for holding valid such legislation. It might then be urged that legislation of that character was not in aid of commerce, but was of a nature well calculated to harass and to impede it. While the penalty in the present statute is quite ample for a mere neglect to deliver in some cases, we cannot say that it is so unreasonable as to be outside of and beyond the jurisdiction of the State to enact.

"While it is vitally important that commerce between the States should be unembarrassed by vexatious state regulations regarding it, yet, on the other hand, there are many occasions where the police power of the State can be properly exercised to insure a faithful and prompt performance of duty within the limits of the State upon the part of those who are engaged in interstate commerce. We think the statute in question is one of that class, and in the absence of any legislation by Congress the statute is a valid exercise of the power of the State over the subject."

In *Western Union Tel. Co.* v. *Commercial Milling Co., supra*, a statute of Michigan which prohibited contractual limitation of the common-law liability due to the negligence of the company in transmission or delivery was upheld as applied to a message received at the company's office in Michigan for transmission to a person in another State. Distinguishing the *Pendleton Case*, Mr. Justice McKenna, for this court, said:

"But there is a manifest difference between the statute of Indiana and the statute of Michigan and of their purposes and effects. The former imposed affirmative duties and regulated the performance of the business of the telegraph company. It besides ignored the requirements or

regulations of another State, made its laws paramount to the laws of another State, gave an action for damages against the permission of such laws for acts done within their jurisdiction. Such a statute was plainly a regulation of interstate commerce, and exhibited in a conspicuous degree the evils of such interference by a State and the necessity of one uniform plan of regulation. The statute of Michigan has no such objectionable qualities. It imposes no additional duty. It gives sanction only to an inherent duty. It declares that in the performance of a service, public in its nature, it is a policy of the State that there shall be no contract against negligence. The prohibition of the statute, therefore, entails no burden. It permits no release from that duty in the public service which men in their intercourse must observe, the duty of observing the degree of care and vigilance which the circumstances justly demand, to avoid injury to another."

The requirement of the Virginia statute as here applied is a valid exercise of the power of the State in the absence of legislation by Congress. It is neither a regulation of nor a hindrance to interstate commerce, but is in aid of that commerce.

The case is clearly governed by *Western Union Tel. Co.* v. *James* and *Western Union Tel. Co.* v. *Commercial Milling Co.*, both above cited.

*Judgment affirmed.*